**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929**

**MFA.No. 1402 of 2001**
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**O.P(MV).NO.842/1993 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA DATED 18/07/2001.**
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**APPELLANT/PETITIONER:**
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**RASHEED, S/O. AHAMMED SAIDU,**
**VALIYAKATH HOUSE,**
**ANCHAMPARUTHY, P.O. PANANGADU,**
**KODUNGALLUR.**

**BY ADV. SRI.P.V.CHANDRA MOHAN,**
**SRI.T.VENUGOPALAN.**

**RESPONDENTS/RESPONDENTS:**
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1. **N.S. RADHAKRISHNAN,**
   **S/O. SUBRAMANIAN,**
   **CHALAKANDIYIL HOUSE,**
   **P.O. VELLANGALLUR,**
   **IRINJALAKUDA.**

2. **SASI, S/O. KRISHNAN,**
   **ASSARYPARAMBIL HOUSE,**
   **MADAVANA DESOM,**
   **ERIYAD VILLAGE,**
   **KODUNGALLUR.**

3. **THE ORIENTAL INSURANCE CO. LTD.**
   **BR. OFFICE, NORTH NADA,**
   **KODUNGALLUR.**

**BY ADV. SRI.V.P.K.PANICKER.**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B. KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A. NO. 1402 of 2001**

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**Dated this the 4th day of July, 2007**

**JUDGMENT**

**KOSHY,J.**

The appellant filed a petition for compensation before the Motor Accidents Claims Tribunal, Irinjalakuda for the injuries sustained by him on 23.3.1993. On that day, he was riding his moped through a public road when a jeep owned by the first respondent and driven by the second respondent in a rash and negligent manner came from the opposite direction and hit against the moped resulting in serious injuries to the appellant including skull fracture. He was removed to the Government Hospital, Kodungallur from where he was referred to the Medical Trust Hospital, Ernakulam where he underwent treatment as inpatient for 11 days. Even after discharge, he continued the treatment. On account of the accident, the appellant sustained serious disabilities including

loss of hearing. He was aged 35 years and employed in Saudi Arabia drawing a net salary of Rs.7,500/- after all expenses. Due to the disabilities, he could not go back to his job and lost his earning power. A total claim of Rs.2,50,000/- was made under various heads. The tribunal found that the accident occurred due to the negligence of the second respondent driver of the vehicle insured by the third respondent insurance company, but, only Rs.17,000/- was granted as total compensation. Only quantum of compensation is challenged in this appeal.

2. According to the appellant/petitioner he was working in Saudi Arabia and the accident occurred during the leave period and he was not able to go back to Saudi Arabia due to the accident. Therefore, he is entitled to 100% compensation for loss of earning capacity. In the absence of evidence like employment certificate, passport etc. tribunal did not accept the contention that he was employed in Saudi Arabia.

But, tribunal only assessed Rs.1,000/- as monthly income. Claimant was a 35 year old able bodied man maintaining a family. Even a non-earning person's income is fixed as Rs.15,000/- per year under the second schedule. Here, since he was an earning person, we fix his monthly income at Rs.1,500/-.

2. Ext.A2 is the wound certificate which shows the following injuries:

> "1. Lacerated wound 4 x 1 x 1/2 c.m. In the middle of forehead running vertically.
>
> 2. Lacerated wound 2 1/2 x 1/2 c.m. running horizontally in the middle of forehead.
>
> 3. Abrasion on both extremities.
>
> 4. Complaint of pain right shoulder.
>
> 5. Depressed fracture middle of forehead."

He was referred to a major hospital. Ext.A7 is the discharge summary from the Medical Trust Hospital, Ernakulam. The appellant/petitioner was referred to the Medical Trust Hospital. He had an inpatient

treatment in the Medical Trust Hospital from 23.3.1993 to 3.4.1993 for 11 days in the Medical Trust Hospital, Ernakulam. Investigations were conducted. It was found that the appellant/petitioner had compound depressed fracture Mid frontal bone. The compound depressed fracture was elevated. He was discharged with direction to come up for review after two weeks. Later, the appellant/petitioner has gone to the E.N.T. specialist on 15.1.1994. Ext.A8 is a certificate issued by the E.N.T. specialist, Thrissur certifying that the appellant complained giddiness and deafness to the right ear and headache. He again consulted the doctor on 2.2.1994, 5.5.1994 and 15.4.1994. Medicines were prescribed for his ailment. Ext.A9 certificate was issued by the E.N.T. specialist certifying that the appellant has reckless headache giddiness and lack of hearing on the right ear following a road traffic accident in 1993. On examination, the doctor found out long vertical scar over the centre

of forehead and hearing loss of 40-60 degrees on the right ear (based on the audiogram). His right ear drum was perforated. Ext.A9 certificate reads as follows:

> "This is to certify that I have examined Mr. Rasheed, 38 years, whose signature is given above. He has recurrent severe headache, giddiness and lack of hearing in the right ear, following a R.T.A. in 1993.
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> Now, on examination, he has a long vertical scar over the centre of forehead and a hearing loss of 40-60 degrees on right ear (based on the audiogram). His right ear drum is perforated. The treatment records show that he had a compound depressed fracture of mid frontal bone.
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> After examining him and after going through his previous charts, I find that he had a 100% temporary disability for eight months following the accident. He has a permanent disability of twenty five per cent (25%)."

3. Tribunal did not accept the certificate as in the wound certificate or in the discharge certificate from the Medical Trust Hospital it was not mentioned that there is hearing problem. In the application filed on 23.7.1973 also hearing problem was not mentioned. According to the counsel for the appellant, in view of the depressed fracture on the forehead, difficulty was felt subsequently. After initial period was over, this difficulty was increased. PW2, E.N.T. specialist was examined. He deposed that the disability is the consequence of head injury caused in the accident. In the above circumstances, we are of the opinion that hearing loss is due to the consequence of the accident. Tribunal did not award any compensation for disability or loss of earning power. Depressed fracture on the forehead is accepted by the tribunal and even though doctor certified 25% disability, we take 10% disability for assessment of compensation. He was aged 35 years at the time of accident. Hence, taking

guidelines from the second schedule, we take 16 as the multiplier. Then compensation for disability and loss of earning capacity will be Rs.1500 x 12 x 16 x $\frac{10}{100}$ = Rs.28,800/-. Tribunal has granted Rs.2,000/- as loss of earning for the treatment period taking Rs.1,000/- as the monthly income. Considering the treatment and fracture, we are of the opinion that he will not able to do any work for three months. Taking Rs.1,500/- as monthly income for loss of earning, he is entitled to Rs.4,500/-. After deducting Rs.2,000/- already granted on this count, balance payable will be Rs,2,500/-. It was argued that for pain and suffering only Rs.4,000/- was awarded and compensation granted in all other heads also were very meagre. Considering the total compensation awarded, we are not enhancing the compensation granted on other heads. The additional compensation of Rs.31,300/- shall be deposited by the third respondent insurance company with 7.5%

interest from the date of application till deposit. On deposit of the compensation, appellant is free to withdraw the same.

**J.B.KOSHY,JUDGE**

**K.P.BALACHANDRAN, JUDGE**

vaa

**J.B. KOSHY AND**
**K.P.BALACHANDRAN, JJ.**

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M.F.A. No.1402/2001

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**Judgment**

**Dated:4th July, 2007**